

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.29735 of 2013

ORDER:

This Writ Petition is filed challenging the proceedings issued by the third respondent dated 23.09.2013 in appointing the fourth respondent as mutawalli in respect of wakf institution known as 'Anjuman Khadimul Muslimeen', and attached properties at kachiguda, Hyderabad.

The Wakf Institution was under a Towliath of Janab Khader Mohiuddin Quadri, who was a Wakif and also mutawalli. After his demise, Janab Syed Saifuddin Quadri was appointed as mutawalli, but he also died in the year, 2008, as a consequence of which, the said post became vacant. Thereafter, the fifth respondent was appointed as temporary mutawalli for a period of one year or till the outcome of the enquiry which was conducted by virtue of the order dated 25.06.2009. The sixth respondent also claims for appointment as mutawalli. Respondent Nos.5 and 6 are legal heirs of original wakif and they are brothers. Now, the present Writ Petition is filed stating that the fifth respondent is not a citizen of this country though he is domicile of this country. The sixth respondent is the grandfather of the petitioner herein. Thus, the petitioner herein filed the Writ Petition challenging the appointment of the fifth respondent on the ground that he is not a citizen of this country and the sixth respondent has become too old to manage the affairs of the wakf institution as he attained 86 years. An enquiry officer was appointed in respect of the allegations made against the fifth respondent. During enquiry, the petitioner submitted his objections. The enquiry officer submitted his report dated 25.07.2013. Based on the said enquiry report, the third respondent, by impugned proceedings dated 23.09.2013, appointed

the fifth respondent as the mutawalli of the Wakf Institution.

The fifth respondent filed a counter-affidavit stating that the petitioner herein filed W.P.Nos.11345 and 12502 of 2013 and this Court disposed of the same by a common order dated 30.08.2013 directing the first respondent to take a decision keeping in view of the finding of the Enquiry Officer submitted on 25.07.2013. Thereafter, the matter was placed before the first respondent, who passed a resolution on 16.09.2013 appointing the fifth respondent as permanent Muthawalli of the Wakf institution. Accordingly, proceedings were issued on 23.09.2013 which are challenged in the present Writ Petition. As per the provisions of Section 5 of the Waqf Act, 1995 (for short, the Act), the duties and function of the Muthawalli are regulated. He further stated that his father was Wakif and first Muthawalli of the Wakf institution, and thereafter his brother late Syed Saifuddin Quadri was recognized as Muthawalli and due to the litigation initiated by the petitioner and the sixth respondent, he was appointed as Muthawalli for a temporary period pending enquiry and later on permanent appointment was made as aforesaid. He further stated that he is an Indian by birth, though he accepted the American citizenship. He states that he is entitled to be recognized as a person of Indian origin which is a category specified in Section 7A of the Citizenship Act, 1955. He is also eligible to apply for grant of Indian citizenship under Section 5(1)(g) of the Citizenship Act, if he is registered as OCI for five years and has been residing in India for one year out of the five years before making the application. He has been living in India more particularly in Hyderabad for the last ten years and as such he is entitled to be recognized as a person of Indian origin enjoying all the rights on par with an Indian citizen except voting right, election to Lok

Sabha/Rajya Sabha/Legislative Assembly/Council besides holding Constitutional posts. The amendment to the Waqf Act was made subsequent to his appointment.

It appears that the Waqf Act, 1995 (for short 'the Act') was amended, amending Section 3(i) of the Act by inserting the following proviso:

“Provided further that the mutawalli shall be a citizen of India and shall fulfil such other qualifications as may be prescribed;

Provided also that in case a waqf has specified any qualifications, such qualifications may be provided in the rules as may be made by the State Government.”

Waqf (Amendment) Act, 2013 (Act 27 of 2013) came into force with effect from 01.11.2013. Even before the amendment came into force, the fifth respondent was appointed as mutawalli on 23.09.2013 on the strength of the resolution passed by the A.P.State Wakf Board on 16.09.2013. The above amendment says that the mutawalli should be a citizen of India in addition to fulfilling other qualifications. The said amendment came into force subsequent to the appointment of the fifth respondent. In that view of the matter, it cannot be held that the appointment of the fifth respondent is contrary to law. However, this will not prevent the petitioner from taking appropriate steps against the appointment of non-citizen as mutawalli by making a representation to the first respondent.

The Writ Petition is, accordingly, dismissed. Miscellaneous petitions, if any, pending in this writ petition shall stand closed. No order as to costs

A. RAMALINGESWARA RAO,J

Date: 01.07.2015
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